IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.13 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

AMBICA CEMENT PRODUCTS

Appearance:

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 09/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B', has referred the following question for the opinion of this Court under Section 256(2) of the

Income-tax Act, 1961 (the Act) at the behest of the Commissioner of Income-tax, Gujarat-II, Ahmedabad :

"Whether in law and on facts, the Income-tax Appellate Tribunal is right in holding that the assessee cannot be penalised under sec. 271(1)(a) of the I.T.Act, 1961 for the late filing of return for the period from January 1, 1980 to March 31, 1980 on account of overlapping of period?"

2. The Assessment Year is 1979-80. The return of income which was due on 30th June, 1979 was filed on 7th August, 1980. Upon finalization of assessment under Section 143(3) of the Act, the Assessing Officer initiated proceedings under Section 271(1)(a) of the Act for levying penalty for non-filing of return of income by due date. After rejecting the explanation tendered by the assessee he imposed penalty of Rs.9,900/-. The assessee failed in first appeal before the Appellate Assistant Commissioner.

3. When the matter was carried in second appeal before the Tribunal, the assessee succeeded partially. The Tribunal came to the conclusion that returns for Assessment Years 1977-78 and 1979-79 had been filed belatedly and as a consequence return for the year under consideration was also delayed. The Tribunal recorded the fact that for immediately preceding Assessment Year i.e. Assessment Year 1978-79, the return of income was filed on 1st April, 1980 and hence, according to the Tribunal, the assessee could not be penalized for the overlapping period. In other words, once the assessee was penalized for Assessment Year 1978-79 for the same period, penalty could not be levied for the subsequent year. Therefore, according to the Tribunal, the assessee was liable to be penalized for the period of four months commencing from 1st April, 1980 to 31st July, 1980, as the assessee had already been penalized upto 31st March, 1980 for Assessment Year 1978-79. The Tribunal has further recorded the fact that the assessee had already been granted similar relief in the earlier Assessment Year in relation to the overlapping period for Assessment Year 1977-78. It is against this order of the Tribunal that the present reference is brought before this Court.

4. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant - Revenue. Though served there is no appearance on behalf of the respondent - assessee.

5. Mr.Bhatt has invited attention to the decision of this Court in the case of Commissioner of Income-tax Vs.

J.L. Trivedi & Sons., [1994] 210 ITR 112 to submit that though Section 271(1)(a) of the Act talks of penalty, it is really in the nature of civil liability and not punishment for an offence. Therefore, it would not be proper to invoke the principle of double jeopardy because the subsequent default cannot be said to be the same default, it being an independent default committed subsequently. It was, therefore, urged on behalf of the applicant Revenue by Mr.Bhatt that the order of the Tribunal was in principle, incorrect on the point of law. However, Mr.Bhatt fairly pointed out that in the aforesaid decision this Court had also stated that the question whether delay in filing return of income for the subsequent year because of delay in completion of accounts of the earlier year can amount to reasonable cause or not will have to be decided by reference to the facts of each case.

6. In the aforesaid circumstances, following the ratio of aforesaid decision, the question referred is answered in the negative i.e. in favour of the Revenue and against the assessee. However, the Tribunal shall, after giving adequate opportunity of hearing to the parties, record independent finding as to whether the assessee was prevented by a reasonable cause from filing the return of income by the due date.

7. In the result, the reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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'Bhavesh'